

1 HONORABLE RICHARD A. JONES
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UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

8 DEI MEI CHEN,

9 Plaintiff,

10 v.

11 J.C. PENNEY CORPORATION, INC.,

12 Defendants.

NO. 2:13-CV-00970 RAJ

STIPULATED PROTECTIVE ORDER

13 1. **PURPOSES AND LIMITATIONS**

14 Discovery in this action is likely to involve production of confidential, proprietary, or
15 private information for which special protection may be warranted. Accordingly, the parties
16 hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The
17 parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket
18 protection on all disclosures or responses to discovery, the protection it affords from public
19 disclosure and use extends only to the limited information or items that are entitled to
20 confidential treatment under the applicable legal principles, and it does not presumptively entitle
21 parties to file confidential information under seal.

22 **STIPULATED PROTECTIVE ORDER**

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1 This protective order is sought because, in this slip and fall action, Plaintiff Dei Mei
2 Chen, through her counsel, has requested in discovery production of proprietary information of
3 Defendant J. C. Penney regarding its internal operations and contracts with service companies
4 regarding maintenance at Defendant's store. In the interest of complying with pending discovery
5 requests, Defendant agrees to produce confidential and/or proprietary information subject to the
6 terms of this protective order.

7 2. **"CONFIDENTIAL" MATERIAL**

8 "Confidential" material shall include the following documents and tangible things
9 produced or otherwise exchanged: Any service agreement with any contractor or subcontractor;
10 any policies, procedures, guides or programs related to implementation, creation and/or enforcement
11 of safety measures; any policies, procedures, guides or programs related to accident or incident
12 prevention or investigation; any safety training or other training materials; any assessment
13 reports and/or audits at the store, district, or corporate level; and including but not limited to the
14 following: Service Agreement between J. C. Penney and Kimco and exhibits thereto; J. C.
15 Penney Safety & Environmental Manual; J. C. Penney Associate Safety Guide; Store Safety
16 Inspection Reports; Store Safety Team Meeting Minutes; and Store Assessment Reports.

17 3. **SCOPE**

18 The protections conferred by this agreement cover not only confidential material (as
19 defined above), but also (1) any information copied or extracted from confidential material; (2)
20 all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony,
21 conversations, or presentations by parties or their counsel that might reveal confidential material.
22 However, the protections conferred by this agreement do not cover information that is in the

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1 public domain or becomes part of the public domain through trial or otherwise.

2 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

3 4.1 Basic Principles. A receiving party may use confidential material that is disclosed
4 or produced by another party or by a non-party in connection with this case only for prosecuting,
5 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
6 the categories of persons and under the conditions described in this agreement. Confidential
7 material must be stored and maintained by a receiving party at a location and in a secure manner
8 that ensures that access is limited to the persons authorized under this agreement.

9 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise
10 ordered by the court or permitted in writing by the designating party, a receiving party may
11 disclose any confidential material only to:

12 (a) the receiving party's counsel of record in this action, as well as employees
13 of counsel to whom it is reasonably necessary to disclose the information for this litigation;

14 (b) the officers, directors, and employees (including in house counsel) of the
15 receiving party to whom disclosure is reasonably necessary for this litigation, unless the parties
16 agree that a particular document or material produced is for Attorney's Eyes Only and is so
17 designated;

18 (c) experts and consultants to whom disclosure is reasonably necessary for
19 this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
20 A);

21 (d) the court, court personnel, and court reporters and their staff;

22 (e) copy or imaging services retained by counsel to assist in the duplication of

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1 confidential material, provided that counsel for the party retaining the copy or imaging service
2 instructs the service not to disclose any confidential material to third parties and to immediately
3 return all originals and copies of any confidential material;

4 (f) during their depositions, witnesses in the action to whom disclosure is
5 reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound"
6 (Exhibit A), unless otherwise agreed by the designating party or ordered by the court. Pages of
7 transcribed deposition testimony or exhibits to depositions that reveal confidential material must
8 be separately bound by the court reporter and may not be disclosed to anyone except as permitted
9 under this agreement;

10 (g) the author or recipient of a document containing the information or a
11 custodian or other person who otherwise possessed or knew the information.

12 4.3 Filing Confidential Material. Before filing confidential material or discussing or
13 referencing such material in court filings, the filing party shall confer with the designating party
14 to determine whether the designating party will remove the confidential designation, whether the
15 document can be redacted, or whether a motion to seal or stipulation and proposed order is
16 warranted. Local Civil Rule 5(g) sets forth the procedures that must be followed and the
17 standards that will be applied when a party seeks permission from the court to file material under
18 seal.

19 5. DESIGNATING PROTECTED MATERIAL

20 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party
21 or non-party that designates information or items for protection under this agreement must take
22 care to limit any such designation to specific material that qualifies under the appropriate

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1 standards. The designating party must designate for protection only those parts of material,
2 documents, items, or oral or written communications that qualify, so that other portions of the
3 material, documents, items, or communications for which protection is not warranted are not
4 swept unjustifiably within the ambit of this agreement.

5 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
6 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
7 unnecessarily encumber or delay the case development process or to impose unnecessary
8 expenses and burdens on other parties) expose the designating party to sanctions.

9 If it comes to a designating party's attention that information or items that it designated
10 for protection do not qualify for protection, the designating party must promptly notify all other
11 parties that it is withdrawing the mistaken designation.

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this
13 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
14 ordered, disclosure or discovery material that qualifies for protection under this agreement must
15 be clearly so designated before or when the material is disclosed or produced.

16 (a) Information in documentary form: (e.g., paper or electronic documents
17 and deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
18 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
19 contains confidential material. If only a portion or portions of the material on a page qualifies
20 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
21 making appropriate markings in the margins).

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6 (c) Other tangible items: the producing party must affix in a prominent place
7 on the exterior of the container or containers in which the information or item is stored the word
8 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection,
9 the producing party, to the extent practicable, shall identify the protected portion(s).

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
11 designate qualified information or items does not, standing alone, waive the designating party's
12 right to secure protection under this agreement for such material. Upon timely correction of a
13 designation, the receiving party must make reasonable efforts to ensure that the material is
14 treated in accordance with the provisions of this agreement.

15 | 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
17 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
18 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
19 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
20 challenge a confidentiality designation by electing not to mount a challenge promptly after the
21 original designation is disclosed.

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1 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
 2 regarding confidential designations without court involvement. Any motion regarding
 3 confidential designations or for a protective order must include a certification, in the motion or in
 4 a declaration or affidavit, that the movant has engaged in a good faith meet and confer
 5 conference with other affected parties in an effort to resolve the dispute without court action. The
 6 certification must list the date, manner, and participants to the conference. A good faith effort to
 7 confer requires a face-to-face meeting or a telephone conference.

8 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
 9 intervention, the designating party may file and serve a motion to retain confidentiality under
 10 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
 11 persuasion in any such motion shall be on the designating party. Frivolous challenges, and those
 12 made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on
 13 other parties) may expose the challenging party to sanctions. All parties shall continue to
 14 maintain the material in question as confidential until the court rules on the challenge.

15 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
 16 OTHER LITIGATION

17 If a party is served with a subpoena or a court order issued in other litigation that compels
 18 disclosure of any information or items designated in this action as “CONFIDENTIAL,” that
 19 party must:

20 (a) promptly notify the designating party in writing and include a copy of the
 21 subpoena or court order;

22 (b) promptly notify in writing the party who caused the subpoena or order to

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1 issue in the other litigation that some or all of the material covered by the subpoena or order is
2 subject to this agreement. Such notification shall include a copy of this agreement; and

3 (c) cooperate with respect to all reasonable procedures sought to be pursued
4 by the designating party whose confidential material may be affected.

5 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential
7 material to any person or in any circumstance not authorized under this agreement, the receiving
8 party must immediately (a) notify in writing the designating party of the unauthorized
9 disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material,
10 (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of
11 this agreement, and (d) request that such person or persons execute the "Acknowledgment and
12 Agreement to Be Bound" that is attached hereto as Exhibit A.

13 **9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
MATERIAL**

14 When a producing party gives notice to receiving parties that certain inadvertently produced
15 material is subject to a claim of privilege or other protection, the obligations of the receiving parties
16 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
17 modify whatever procedure may be established in an e-discovery order or agreement that provides
18 for production without prior privilege review. Parties shall confer on an appropriate non-waiver
19 order under Fed. R. Evid. 502.

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1 10. NON TERMINATION AND RETURN OF DOCUMENTS

2 Within 60 days after the termination of this action, including all appeals, each receiving
3 party must return all confidential material to the producing party, including all copies, extracts and
4 summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

5 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
6 documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition
7 and trial exhibits, expert reports, attorney work product, and consultant and expert work product,
8 even if such materials contain confidential material.

9 The confidentiality obligations imposed by this agreement shall remain in effect until a
10 designating party agrees otherwise in writing or a court orders otherwise.

11 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

12 DATED: 4/3/2014 /s/ Ronald L. Unger
13 Ronald L. Unger, WSBA #16875
14 Attorneys for Plaintiff

15 DATED: 4/10/2014 /s/Kristen Dorrity
16 Kristen Dorrity, WSBA#23674
17 Attorneys for Defendant

18 PURSUANT TO STIPULATION, IT IS SO ORDERED.

19 DATED this 16th day of April, 2014.



20
21 The Honorable Richard A. Jones
22 United States District Judge

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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of Wei Chen v. J. C. Penney, Inc., United States District Court for the Western District of Washington, Cause No. 2:13-CV-00970 RAJ. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to do so could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature:

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